

**REMARKS**

Applicant respectfully requests favorable reconsideration of this application, as amended.

Applicant notes that withdrawn Claim 17 was amended to depend from method Claim 16.

Claim 8 was rejected under 35 U.S.C. § 102(b) as being anticipated by Buhse (U.S. 1,615,680), and Claims 10–13 and 15 were rejected as being anticipated by Aasted (U.S. 5,635,230). Claims 9 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Aasted in view of Buhse. Applicant respectfully traverses.

The present invention provides wafer half-shells that are formed from a wafer sheet that is made by baking wafer batter in a mold that has a female half-mold and a male half-mold. The wafer sheet has upper and lower surfaces with a substantially smooth finish that is substantially free of large surface pores; in other words, the baked wafer sheet has a particular surface finish. The individual half-shells are separated from the wafer sheet by cutting, punching, etc., carried out in a direction perpendicular to the general plane of the wall interconnecting the wafer half-shells. As the result of this operation, the wafer half-shell has a porous region that extends circumferentially, or, alternatively, a porous region that may be discontinuous. The “porous surface” of this “porous region” and the smooth surface finish of the annular surface of the mouth and side walls of the wafer half-shell are, of course, very different. See, e.g., Specification at Pages 1, 6–8, 15 (i.e., Claim 17), etc.

Buhse discloses an ice cream cone, made from baked pastry, that includes a heavy internal coating of chocolate. See, e.g., Lines 1–13. Buhse's FIG. 3 depicts a baked pastry body 4, on which a circumferential contact rib 7 is provided, that includes “a chocolate coating 8 that extends not only over the interior but also over the exterior surface thereof” (Lines 60–62). Buhse fails to teach or suggest a wafer half-shell that has a mouth annular surface and side wall surfaces that have a substantially smooth surface finish where the outer surface of the side wall that has a porous, continuous or discontinuous region which extends peripherally and is recessed relative to the mouth annular surface of the half-shell, as recited by Claim 8. Instead, Buhse teaches that the external surface of body 4 and the circumferential contact rib 7 have the same surface finish, i.e., chocolate coating 8, which is, presumably, a substantially smooth surface. Consequently, Buhse fails to disclose all of the features recited by Claim 8.

Even assuming, *arguendo*, that Buhse *suggests* omitting the chocolate coating 8 from the external surfaces of body 4 and circumferential contact rib 7 depicted in FIG. 3,<sup>1</sup> Buhse still fails to teach or suggest all of the features recited by Claim 8 because these surfaces would still have the same surface finish, which is, presumably, a substantially smooth surface. *See*, FIG. 1 (depicting body 4 and longitudinal exterior rib 6 having the same surface finish). Consequently, Buhse fails to teach or suggest all of the features recited by Claim 8. Moreover, none of the remaining references cures the deficiencies of Buhse.

Aasted discloses a method and system for producing shells of fat-containing, chocolate-like masses. *See*, Abstract. Aasted fails to teach or suggest two, half-wafer shells coupled one to the other along annular mating surfaces, as recited by Claim 10. Instead, Aasted teaches that his shells "are made of thermoplastic food materials, i.e. materials which become soft and mouldable (liquid) by heating and are given a stable shape in the subsequent cooling," such as chocolate (Col. 2:46-49; emphasis added). Furthermore, Aasted employs heating and cooling processes to join his thermoplastic shells together that are simply not amenable to coupling wafer half-shells, which are, of course, baked wafer batter. Consequently, Aasted fails to disclose all of the features recited by Claim 10.

Accordingly, Claims 8 and 10 are allowable over the cited references. Claim 9, depending from Claim 8, and Claims 11-15, depending from Claim 10, are also allowable, at least for the reasons discussed above.

In view of the remarks presented herein, Applicant respectfully submits that this application is in condition for allowance and should now be passed to issue.

A Notice of Allowance is respectfully solicited.

If any extension of time is required in connection with the filing of this paper and has not been requested separately, such extension is hereby requested.

The Commissioner is hereby authorized to charge any fees and to credit any overpayments that may be required by this paper under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 02-2135.

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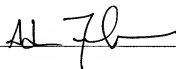
<sup>1</sup> While the chocolate coating 8 is depicted as coating both the interior and exterior surfaces of body 4, as well as circumferential contact rib 7, Buhse discloses that "is it deemed far the best practice to leave the cones with the exposed baked pasty external surfaces" (Lines 62-64).

Respectfully submitted,

Rothwell, Figg, Ernst & Manbeck P.C.

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By:

A handwritten signature in black ink, appearing to read 'A. Treiber', is written over a horizontal line.

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